IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2613 of 2003

HON'BLE MR.JUSTICE K.S.JHAVERI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

DHRUV HARI BHISE

Versus

ASHOK VISHNU BHISE

Appearance:

1. Special Civil Application No. 2613 of 2003

MR NS SHEVADE for Petitioner No. 1

MR SM BHATT for Respondent No. 1

MR JV MEHTA for Respondent No. 2

CORAM : HON'BLE MR.JUSTICE K.S.JHAVERI

Date of decision: 10/09/2004

ORAL JUDGEMENT

1.0. RULE. Mr.S.M. Bhatt waives service of rule on behalf of respondent no.1 and Mr.J.V. Mehta waives

service of rule on behalf of respondent no. 2.

1.1. The petitioner has, by way of this petition, challenged the order dated 9th August, 2001 passed by the City Civil Court below Exh.62 in Civil Suit No.991/1997, whereby the application of the petitioner was rejected on the following grounds :-

> "There is no reason coming forth for late inclusion of some of the properties in the reply by defendant no. 1. It is also not the case of defendant no. 1 that he was unaware of these properties when reply was filed and, therefore, there being no grounds for this late inclusion, this does not deserve to be allowed.
>
> Moreover the letters of defendant no.1 produced vide list exh.70 go to show that he was aware of these properties and status thereof and, therefore, also, he cannot be permitted to take a different stand altogether and hence this deserves rejection.
>
> This appears to be a tactic to further delay the proceedings when cross-examination is in progress."

2.0. Mr.Shevade learned advocate appearing for the petitioner submitted that the cause of action for filing amendment has arisen because of the modification in the issue framed on 3rd April, 2001 and the present petitioner had filed the amendment application immediately. Thus, according to him, there is no delay in filing the application and the amendment ought to have been allowed.

2.1. Mr. Shevade further submitted that the Civil Revision Application was permitted to be withdrawn in view of the amendment in Section 115 of Civil Procedure Code, with a liberty to file fresh petition. Pursuant to which the present petition has been filed.

2.2. Mr. Shevade has relied upon the decision of the Apex Court in the case of Nichhalbhai Vallabhai & Ors. v. Jaswantlal Zinabhai & Ors., reported in A.I.R. 1966 S.C. p.997, wherein, the Apex Court has held that the amendment should be allowed in order to avoid multiplicity of litigation. However, in the present case, the Trial Court has rejected the application on the ground of limitation and, therefore, the said decision

will not help the petitioner.

2.3. Mr. Shevade has further relied on the decision of the Apex Court in the case of Manohar Lal v. National Building Material Supply reported in A.I.R. 1969 S.C. p.1267, wherein it is held that amendment should not be rejected on the technical grounds. However, in the present case, ground with regard to limitation is not a technical, but it is a ground which is required to be considered by the Trial Court. whereby while granting amendment, the Trial Court has to consider whether the issue framed is not barred by limitation.

2.4. Lastly, Mr. Shevade has relied upon the decision of this Court in the case of Shanabhai Mangalbhai Patel v. Bhagwandas Revabhai Patel reported in 1990 G.L.H. p.403, wherein this Court has held that the Court cannot reject the amendment application on the ground that error is committed by the litigant in drafting the pleadings.

2.7. As against that Mr. Mehta learned advocate appearing for the respondents has relied upon the decision of the Apex Court in the case of Pankaja v. Yellappa reported in A.I.R. 2004 S.C.W. p. 4522, wherein it is held that if the amendment is barred by limitation, then the Court should not grant the same.

3.0 Apart from that, after the order of this court in Civil Revision Application, the proceeding before the trial court is substantially completed and is at final stage. In that view of the matter, this is not a case where this court should exercise its power under Article 227 of the Constitution of India.

4.0 Having gone through the order passed by the Trial Court below Exh.62 in Civil Suit No.991/1997 dated 9th August, 2001, as also the findings and conclusion arrived at by the Trial Court, I am satisfied that the order passed by the Trial Court is quite just and proper, which does not warrant any interference in this petition. Hence, the petition stands dismissed. Rule is discharged with no order as to costs.

[K.S. JHAVERI, J.]

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